

## CHAPTER XII

### MISCELLANEOUS DUTIES AND OTHER MATTERS RELATING TO THE OFFICE OF THE TOWNSHIP TRUSTEE

#### CANADA THISTLE, JOHNSON GRASS AND WEED ERADICATION

Detrimental plants (including Canada thistle and Johnson grass) Canada thistle (*cirsium arvense*), Johnson grass, sorghum alumn (*sorghum halrphense*), bur cucumber, (*sicyos angulatus*), shattercane (*Sorghum bicolor* [L.] Moench spp. *drummondii* [Steud.] deWet), and, in residential areas only, noxious weeds and rank vegetation must be cut down or eradicated by chemicals in the bud stage of growth or earlier, so as to prevent any detrimental plants from maturing on any real estate at that time. IC 15-3-4-1

A township trustee who has reason to believe that detrimental plants may be on real estate may, after giving forty-eight (48) hours notice to the owner, or person in possession of the property, enter the real estate to investigate. Except as provided by IC 15-3-4-2 (c), if the township trustee determines after investigating the property or by visual inspection without entering the property, that a person has detrimental plants growing on real estate in the township that have not been destroyed as described in IC 15-3-4-1, the trustee of the township in which the real estate is located shall notify, in writing, the owner, or person in possession of the real estate to destroy the detrimental plants in a manner provided in IC 15-3-4-1 within five (5) days after the notice is given. If the detrimental plants are not destroyed as provided in IC 15-3-4-1 within five (5) days after notice is given, the trustee shall cause the detrimental plants to be destroyed in a manner seeming most practical to the trustee within three (3) additional days. The trustee may hire a person to destroy the detrimental plants. The trustee or person employed to destroy the detrimental plants may enter upon the real estate where the detrimental plants are growing to destroy the detrimental plants, and are not civilly or criminally liable for damage to crops, livestock, or other property occurring while carrying out such work, except for gross negligence or willful or wanton destruction. IC 15-3-4-2

If the county has established a county weed control board under IC 15-3-4.6 the township trustee may notify the county weed control board of the real estate containing detrimental plants, and the board shall either assume jurisdiction to control the detrimental plants or decline jurisdiction and refer the matter back to the township trustee. The county weed control board shall notify the township trustee of the board's decision. IC 15-3-4-2 (c)

Notice required in IC 15-3-4-2(a) may be given by mail, using certificate of mailing, or by personal service.

The township trustee may pay for the chemicals, work, and labor performed in cutting or destroying detrimental plants under IC 15-3-4 at a rate per hour to be fixed by the township trustee commensurate with local hourly wages.

In all cases which the infestation of the land with detrimental plants is so great and widespread as in the opinion of the trustee to render such cutting or eradication by hand methods impractical, the trustee shall engage the necessary power machinery or equipment and may pay for the work at a rate per hour fixed by the township trustee commensurate with the local hourly rate.

When the work has been performed, the person doing the work shall file an itemized bill for the work in the office of the trustee of the township, and when the bill has been approved the trustee shall pay the bill out of the township fund.

The trustee of the township shall certify the cost or expense of the work, and the cost of the chemicals, adding to such bill twenty dollars (\$20) per day for each day that the trustee or the trustee's agent supervises the performance of the services required under this chapter as compensation for services, with a description of the real estate on which the labor was performed. The State Board of Accounts is of the audit position the twenty dollars (\$20) per day should be deposited to the township fund in accordance with IC 15-3-4-3.

The certified statement of costs prepared under IC 15-3-4-3(c) shall be mailed using certificate of mailing to, or personally served on the owner or person possessing the real estate. The certified statement shall be mailed to the auditor of state for any real estate owned by the state or to the fiscal officer of another municipality (as defined in IC 5-11-1-16) for real estate owned by the municipality. IC 15-3-4-3(d) The statement shall request that the person pay the cost of performing the service under IC 15-3-4-3(c) to the township trustee.

If the owner or person in possession of the property does not pay the amount set forth in the statement within ten (10) days after receiving the notice under subsection (d), the township trustee shall file a copy of the certified statement in the office of the county auditor of the county where the real estate is located. IC 15-3-4-3(e)

The auditor shall place the amount claimed in the certified statement on the tax duplicate of the real estate. Except as provided in subsections (j) through (l), the amount claimed shall be collected as taxes are collected. IC 15-3-4-3(f)

### BUDGET

When the annual budget is prepared, a sufficient amount shall be appropriated to enable township officials to comply with this chapter. IC 15-3-4-7

### CERTIFICATE - AMOUNTS ON TAX DUPLICATES - COLLECTION AND PAYMENT

If the owner, or person in possession of the property does not pay the amount set forth in the statement within the ten (10) days after receiving the notice under IC 15-3-4-3(d), the township trustee shall file a copy of the certified statement in the office of the county auditor of the county where the real estate is located.

The county auditor, upon receiving and filing such trustee's certificate, as prescribed in this chapter (IC 15-3-4-1 through 15-3-4-7), shall immediately place said amounts on the tax duplicate of the county and such amounts shall be due at the next tax paying time, and shall be collected for the proper township or townships, the same as other state, county, or township taxes are collected, including penalties, forfeitures, and sales, and when so collected shall be paid to the proper trustee and placed in the township fund. IC 15-3-4-4

After an amount described in IC 15-3-4-3(f) is collected, the funds shall be deposited in the trustee's township funds for use at the discretion of the trustee. The State Board of Accounts is of the audit position that this section is for expenditures for which statutory authority exists and with appropriation.

If there is no money available in the township fund for that purpose the township board, upon finding an emergency exists, shall act under IC 36-6-6-14(b) or IC 36-6-6-15 to borrow a sum of money sufficient to meet the emergency.

The trustee, when submitting estimates to the township board for action, shall include in the estimates an item sufficient to cover those expenditures.

A person who knowingly allows detrimental plants to grow and mature on land owned or possessed by the person, knowing of the existence of detrimental plants on land owned or possessed by the person, fails to cut them down or eradicate them by chemicals each year, as prescribed in IC 15-3-4-5, having charge of or control over any highway, knowingly allows detrimental plants to grow or mature on the right-of-way of the highway, or, knowing of the existence of the detrimental plants fails to cut them down or eradicate them by chemicals, as prescribed in IC 15-3-4-5, having charge of or control over the right-of-way of a railroad or interurban company, knowingly allows detrimental plants, to grow and mature thereon, or knowing of the existence of the detrimental plants, fails to cut them down or eradicate them by chemicals, as prescribed in IC 15-3-4-5, or knowingly sells Canada thistle (*cirsium arvense*) seed, commits a Class C infraction. Each day this section is violated constitutes a separate infraction.

All judgments collected under this section shall be paid to the trustee and placed in the trustee's township funds for use at the discretion of the trustee. The State Board of Accounts is of the audit position that this section is for expenditures for which statutory authority exists and with appropriation.

The Indiana cooperative extension service shall provide technical assistance to township trustees for the control of detrimental plants.

All law enforcement agencies having jurisdiction in a township shall assist the township trustee in carrying out the duties imposed on the trustee under this chapter. IC 15-3-4-8

#### JOHNSON GRASS - DUTY TO RESTRICT GROWTH AND SEED PRODUCTION

The state highway department, railroads, drainage districts, township boards, road districts, public utilities and other public and quasi public corporations shall, between the first day of July and the fifteenth day of September, do anything possible to restrict the growth and seed production of all Johnson grass growing on lands for which they are responsible in a corporate municipality or township of this state. IC 15-3-5-1

#### CERTIFIED REPORT

Each township trustee shall, during the month of January of each year, make and sign a written or printed certified report, correctly and completely showing the names and addresses of each and all officers and employees of the township and the respective duties and compensation of each. The report must be filed (on Form 100R) in the office of the State Examiner of the State Board of Accounts, Room E418, State Office Building, Indianapolis, Indiana, 46204-2765. IC 5-11-13-1. A person who violates section 1 of this chapter commits a Class C infraction. If violated by an elected state officer, the officer is liable to impeachment, and if violated by any other person, the person is subject to removal for neglect of duty under the procedures described in IC 34-17. IC 5-11-13-3

#### DECEASED PERSON - PAYMENT OF FUNDS DUE

The State Board of Accounts is often asked the correct method of making payment of money due an official, employee, or other person who has died. If an executor, administrator or personal representative has been designated by the court, payment should be made to such executor, administrator or personal representative. Payment may be made to a person claiming to be entitled to payment or delivery of property of the decedent without awaiting the appointment of a personal representative or the probate of a will when an affidavit is presented stating (a) no petition for the appointment of a personal representative is pending or has been granted, and (b) forty-five (45) days have elapsed since the death of the decedent, and (c) the value of the gross probate estate less liens and encumbrances thereon does not exceed twenty five thousand dollars (\$25,000), and (d) the claimant is entitled to payment or delivery of the property. IC 29-1-8-1

A form of affidavit acceptable in fulfilling the intent of the above referenced law will be furnished upon request.

#### LICENSE PLATES

All vehicles owned by any township shall be subject to licensing with permanent plates and accompanying permanent registration with the Bureau of Motor Vehicles. Effective from the time the title for the vehicle is acquired until said title is relinquished by the owner. IC 9-1-4-44

## LINE FENCES

As used in this section, "agricultural land" means land that is: (1) zoned or otherwise designated as agricultural land; (2) used for growing crops or raising livestock; or (3) reserved for conservation. (b) This chapter does not apply to a fence that separates two (2) adjoining parcels of property unless at least one (1) of the adjoining parcels is agricultural land. IC 32-26-9-0.5

It shall be the duty of all owners of land whose lands lie outside the corporate limits of any city, or town, to separate said land from adjoining lands by a partition fence to be constructed upon the line or lines dividing or separating such lands.

Except there be an agreement between the landowners as to which part of the partition fence each shall build, repair or rebuild, the landowner whose land lies to the east of said fence shall build the north half thereof, and the landowner whose land lies to the west of said fence shall build the south half thereof. If the landowner's land lies north of the fence to be built, rebuilt or repaired, he shall build the west half thereof, and if the landowners land lies south of such fence he shall build the east half thereof.

If either of such landowners shall have constructed one-half of any partition fence other than the one mentioned above, and shall have maintained such one-half of the partition fence for a period of not less than five (5) years, such landowner shall thereafter be entitled to continue to maintain such one-half of said fence. IC 32-26-9-2

If any landowner fails to build or repair his portion of a partition fence, any landowner interested in said fence (after having built or repaired his portion of the fence) shall give the defaulting landowner twenty (20) days notice to build or repair the fence. If the defaulting landowner fails to build or repair his portion within the specified time, the interested landowner shall then notify the township trustee of the township wherein such lands are located. IC 32-26-9-3

If the fence sought to be built or repaired is on a township line, the complaining landowner shall notify the trustee of the township wherein the lands of the complaining landowner are located, of the improvements he desires made. IC 32-26-9-3

Within a reasonable time after being notified, the trustee shall estimate the cost of the fence in question and make out a statement and notify the defaulting landowner of the probable cost of said fence. If after twenty (20) days after receiving a notice under this section the fence is not built or repaired, the township trustee shall build or repair the fence. In such construction the trustee shall use only the materials for such fences as are most commonly used by the farmers of the community. IC 32-26-9-3

In case the township trustee is disqualified (being an interested party himself, or related to any of the interested parties), the trustee of an adjoining township residing nearest to where such fence is situated shall build or repair the partition fence. IC 32-26-9-3

In case of disagreement between landowners, floodgates shall be constructed by the township trustee in the manner and according to the conditions for constructing partition fences. IC 32-26-9-3

As soon as the trustee has had a line fence built, rebuilt, or repaired, he shall make out a certified statement in triplicate of the actual cost incurred by him in such construction. One copy is to be handed to or mailed to the landowner affected by the work, one copy is to be retained by the trustee as a township record, and the other copy is to be filed in the county auditor's office of the county wherein the fence is located and where the lands of the landowner affected are located.

At the same time, the trustee shall file with the county auditor a claim against the county for the amount shown in the statement. The claim, if not in error, shall be allowed by the county commissioners and the county auditor shall issue a warrant out of the County General Fund to the township trustee submitting the claim. The amount so paid out shall be placed by the county auditor on the tax duplicate against the lands of the landowner affected by the work, and shall be collected as other taxes are collected and when collected shall be paid into the County General Fund. IC 32-26-9-4

All payments for expenses involved in the construction or repair of line fences by the township trustee should be paid from the Township Fund without appropriation. The warrant received from the county auditor as reimbursement for the costs shown will be receipted to the Township Fund.

Fences erected by railroad companies along their rights of way are not partition fences, hence the township trustee is not authorized to build or repair such fences. Cleveland, C., C. & I. R. Co. v. Crossley, 36 Ind. 370 (1870); Jeffersonville, M. & I. R. Co. v. Sullivan, 38 Ind.

Official Opinion No. 89-19 concerns the strength of a line fence as does IC 32-26-9-3(f).

#### ASSESSMENT TRAINING SESSIONS HELD BY STATE BOARD - COMPENSATION OF THOSE ATTENDING

The Department of Local Government Finance may require local assessing officials and employees to attend instructional sessions held by the board or held by others but approved by the board. A local assessing official or employee who is required to attend an instructional session or who, at the board's request, meets with the board on official business shall receive:

A lodging allowance for each night preceding session attendance not less than the lodging allowance equal to the lesser of: the cost of a standard room rate at the hotel where the session is held; or the actual cost of lodging paid; a subsistence allowance for meals for each day in attendance not less than the subsistence allowance for meals paid to state employees in travel status, but not more than the maximum subsistence allowance permitted under the regulations of the General Services Administration for federal employees in travel status, as reported in the Federal Register; a mileage allowance equal to that sum per mile paid to state officers and employees.

The rate per mile shall change each time the state government changes its rate per mile. The lodging and subsistence allowances shall be set by the county fiscal body.

If a local assessing official or employee is entitled to receive an allowance under this section, the Department of Local Government Finance shall furnish the appropriate county auditor with certified statement which indicates the dates of attendance. The county treasurer shall issue a warrant for the total amount of allowances entitled to be received. The county treasurer shall pay the warrant from the county general fund from funds not otherwise appropriated.

In the case of one (1) day instructional sessions, a lodging allowance may be paid only to persons who reside more than fifty (50) miles from the session location. Regardless of the duration of the session, and even though more than one person may have been transported, only one (1) mileage allowance may be paid to an official or employee furnishing the conveyance. IC 6-1.1-35-3

The Department of Local Government Finance shall provide training to township and trustee assessors. If any year in which an assessing official and county board of review member takes office for the first time, the Department of Local Government Finance shall conduct two (2) eight (8) hour sessions for these new assessing officials and new members of the county boards of review. These sessions must be held at sufficient, convenient locations throughout Indiana. These sessions may not be held during normal working hours of assessing officials and board members.

Any new assessing official or county board of review member who attends both sessions is entitled to receive two hundred dollars (\$200) and mileage from the county in which the official or member resides. A person is entitled to mileage only for travel between the person's residence and the training session nearest to the person's residence.

Each year the Department of Local Government Finance shall conduct three (3) continuing education sessions lasting at least three (3) hours each for all assessing officials and county board of review members. These sessions must be conducted at sufficient, convenient locations and must be held after normal working hours for assessing officials and board members.

Any assessing official or county board of review member who attends at least two (2) of the sessions is entitled to receive: (1) fifty dollars (\$50) for attending two (2) sessions, or (2) seventy-five dollars (\$75) for attending all three (3) sessions, from the county in which the official or member resides. A person is entitled to a mileage allowance under IC 6-1.1-35.2-3 only for travel between the person's residence and the training session nearest to the person's residence.

The training programs prescribed by this chapter must be designed so that the attendees at the program are prepared to train their subordinates.

A county that is required to make a payment to an assessing official or county board of review member under this chapter must make the payment regardless of an appropriation. The payment may be made from the county's cumulative reassessment fund. IC 6-1.1-35.2

#### MEMORIAL DAY EXPENSES

The respective authorities of the several counties, townships, cities, and towns of the State of Indiana, may appropriate annually to one (1) post, garrison or camp of each of the following organizations: Veterans of Foreign Wars of the United States, United Spanish War Veterans, Disabled American Veterans of the World War, the American Legion, the Army and Navy Union of the United States of America, Marine Corps League, Veterans of World War I Inc., American Veterans of World War II, Catholic War Veterans and Jewish War Veterans, in the respective counties, townships, cities or towns, a sum of money not to exceed the amount of five hundred dollars (\$500) to any such post, garrison or camp to aid in defraying the expenses of Memorial Day. IC 10-7-13-1

#### PUBLIC DEPOSITORY

Every public officer in this state, who receives or distributes public funds, shall keep a cash book wherein there shall be entered daily by item all receipts of public funds. The cash book shall be balanced daily, shall show funds on hand at the close of each day, and shall be a public record and open to public inspection. IC 5-13-5-1

All funds collected by the township trustee shall be deposited on or before the first and fifteenth days of each month and in the same form they are received. On or before the fifth of each month the trustee shall file with the local board of finance a verified statement reconciling as the last day of the month, the balance per records with the balance per depository. IC 5-13-6-1

All township warrants shall be drawn by the township trustee directly against a township depository. All checks drawn upon depositories shall be signed by public officers authorized to sign the same to their official capacity. IC 5-13-5-2

The township board of each township shall constitute a board of finance for their respective townships. They shall have supervision of all public funds of their respective townships. IC 5-13-7-5

See Deposits and Investments of Public Funds, Pages 16-1 to 16-6.

## PUBLICATIONS AND NOTICES

Whenever officers of a township are required to publish a notice affecting the township, they shall publish the notice in two (2) newspapers published in the township.

If there is only one (1) newspaper published in the township, then the notice shall be published in that newspaper and, if another newspaper is published in the county and circulates within the township, in the other paper. If no newspaper is published in the township, then publication shall be made in a newspaper published in the county and that circulates in the township. [IC 5-3-1-4]

"Newspaper" refers to a newspaper that:

1. Is a daily, weekly, semiweekly, or triweekly newspaper of general circulation;
2. Has been published for at least three (3) consecutive years in the same city or town;
3. Has been entered, authorized, and accepted by the United States Postal Service for at least three (3) consecutive years as mailable matter of the second class (as defined in 39 U.S.C. 3622); and
4. Has at least fifty percent (50%) of all copies circulated paid for by subscribers or other purchasers at a rate that is not nominal. IC 5-3-1-0.4

The number of publications in each of two newspapers for some of the most frequently used publications and notices, together with the Indiana Code reference are:

Annual Report	one	IC 5-3-1-2
Bonds, Determination to Issue	two	IC 6-1.1-20-5
Bonds, Sale of	two	IC 5-3-1-2
Budget Appropriations and Proposed Levy	two	IC 6-1.1-17-3
Additional Appropriations	one	IC 6-1.1-18-5; and IC 5-3-1-2
Buildings	two	IC 5-16-1-3
Fire Fighting Equipment	two	IC 5-3-1-2
Materials, Equipment, Goods and Supplies	two	IC 5-3-1-2
Meetings (Not Concerning Any Other Matter in IC 5-3-1-2(c), (d), (e), (f), (g), or (h))	one	IC 5-3-1-2
Sale of Buildings and Grounds	two	IC 5-3-1-2
Sale of Abandoned School Property	two	IC 20-4-5-8

A notice published in accordance with IC 5-3-1 or any other Indiana statute is valid even though it contains errors or omissions, as long as: (1) a reasonable person would not be misled by the error or omission; and (2) the notice is in substantial compliance with the time and publication requirements applicable under IC 5-3-1 or any other Indiana statute under which the notice is published.

IC 5-3-1-0.7 defines qualified publication. IC 5-3-1-1-4(f) concerns supplemental publications in qualified publications.

## TOWNSHIP ASSESSORS

When performing the real property reassessment duties prescribed, the township assessor is entitled to per diem compensation, in addition to salary, at a rate fixed by the county fiscal body, for each day that he is engaged in reassessment activities.

### TRANSFER OF FUNDS

Whenever the purposes of a tax levy have been fulfilled, the township board shall have authority to order the trustee to transfer any unused and unencumbered balance in the fund resulting from such general or special levy to the township fund. Funds for redemption of township assistance obligations are transferred to the Township Assistance Fund. IC 36-1-8-5

### SURPLUS FUNDS ACQUIRED THROUGH SALE OF MUNICIPAL CORPORATION BONDS - DISPOSITION

Whenever bonds have been or may hereafter be issued by an political subdivision in the State of Indiana, for any lawful purpose, and the purpose for which the bonds were issued has been accomplished or abandoned and a surplus remains from the proceeds of such bond sale, the legislative body of any such political subdivision shall by an order entered of record direct the disbursing officer of such municipal corporation to transfer the unused balance or surplus to the fund of the political subdivision pledged to the payment of principal and interest on those, and upon such order being made the disbursing officer shall make such transfer. Thereafter, such funds transferred shall be used for the payment of bonds to which the surplus bond proceeds or investment earnings are attributable or interest due for such bonds. IC 5-1-13-2

### TEMPORARY TRANSFER BETWEEN FUNDS

The fiscal body of a political subdivision may, by resolution, permit the transfer of a prescribed amount, for a prescribed period, to a depleted fund from another fund of the political subdivision if it must be necessary to borrow money to enhance the depleted fund; there must be sufficient money on deposit to the credit of the other fund that can be temporarily transferred; the prescribed period must end during the budget year of the year in which the transfer occurs, except as authorized by IC 36-1-8-4(b); the amount transferred must be returned to the other fund at the end of the prescribed period; and, only revenues derived from the levying and collection of property taxes or special taxes or from operation of the political subdivision may be included in the amount transferred. IC 36-1-8-4

Such temporary transfer should be affected by issuing a warrant and receipt for the amount of the transfer. The warrant should be endorsed and deposited in the depository account designated for the depleted fund. No appropriation is required either for the transfer or the repayment. No interest should be charged on any such temporary transfer.

### WORKER'S COMPENSATION INSURANCE

The provision of the Worker's Compensation Act (IC 22-3-2) apply to township employees. A township trustee shall carry worker's compensation insurance. IC 22-3-2-2; IC 22-3-6-1(a)(b)

The provisions of the Worker's Occupational Disease Act (IC 22-3-7) do not apply to township employees. IC 22-3-7-34

### LUCRATIVE OFFICE - DEPUTIES

The position of appointed deputy of an officer of a political subdivision is not a lucrative office for the purposes of Article 2, Section 9 of the Constitution of the State of Indiana. IC 5-6-4